

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

MEMORANDUM AND ORDER

06 CR 0181 (RJD)

CARMINE BAUDANZA, et al.

Defendants.
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DEARIE, District Judge.

The Court issued a Memorandum and Order in this matter on March 18, 2014 (ECF No. 436), stating in sum and substance that defendant Carmine Baudanza would be released from his restitution obligation once the Court received proof that the judgment in favor of Carmine's Dream, Inc. in the matter of Carmine's Dream, Inc. v. Ceasar's Bay Shopping Center, LLC, et al., Index No. 32456/2007 in Supreme Court, County of Kings had been marked satisfied (thus affording in-kind payment of restitution to the victims' designated beneficiary). Carmine Baudanza's attorney now points out in a letter dated March 26, 2014 that the March 18, 2014 Memorandum and Order overlooks the co-defendant: Carmine's brother, Joseph Baudanza. As the letter reiterates, the settlement in state court contemplated that the victims would cooperate to ensure the satisfaction of both defendants' restitution orders and the restitution order was joint and several. Accordingly, the letter asks that we modify the March 18, 2014 Memorandum and Order to direct the Clerk to mark both restitution orders satisfied, once we receive proof that the state court judgment has been satisfied.

The Court omitted Joseph Baudanza deliberately, not because the Court thought that provision of the settlement inappropriate, but because the current motion to deem the restitution

obligation satisfied was directed only at Carmine Baudanza's sentence and was originally filed by his attorney, not Joseph Baudanza's. We had instead anticipated that Joseph Baudanza would move the Court separately for an order marking his joint and several restitution obligation satisfied, if and when we received the proof referenced in the March 18, 2013 Memorandum and Order and the Clerk marked Carmine Baudanza's restitution satisfied. As we noted at the conference held last November 26th, "the victims don't get paid twice." Cf. United States v. Nucci, 364 F.3d 419, 423-24 (2d Cir. 2004).

The Court sees no obvious objection to marking the restitution obligation satisfied for Joseph Baudanza as well as Carmine Baudanza (other than the most obvious objection, that our initial February 27, 2014 Memorandum and Order (ECF No. 431) was incorrectly decided). But now that the question has been unequivocally raised, we think the government must have the opportunity to respond with any reasons that Joseph Baudanza's restitution order should not also be deemed satisfied. The victims may of course be heard as well. Responses, if any, shall be filed no later than April 16, 2014. In the interim, our Memorandum and Order of March 18, 2014 remains in effect.

Dated: Brooklyn, New York
April 4, 2014

/s/ Judge Raymond J. Dearie


RAYMOND J. DEARIE
United States District Judge